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1941 Supplement

To

Mason's Minnesota Statutes

1927

1939 to 1941

(Supplementing Mason's 1940 Supplement)

Containing the text of the acts of the 1941 Session of the Legislature, both new and amendatory, and notes showing repeals, together with annotations from the various courts, state and federal, and the opinions of the Attorney General, construing the constitution, statutes, charters and court rules of Minnesota together with Law Review Articles and digest of all common law decisions.

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order made in said probate proceedings and every conveyance of real estate made pursuant thereto and every decree of distribution made therein are hereby legalized and validated, as against the objection that a copy of the notice of any hearing, or hearings in said proceedings, was not mailed as above provided, or that proof of mailing such notice was not

filed in the probate court. (Act Mar. 28, 1941, c. 79, §1.)

8992-188b. Same—Proceedings prior to June 1, 1939.—Nothing herein contained shall apply to any probate proceedings held subsequent to June 1, 1939, or affect any action now pending to determine the validity of any instrument validated hereby. (Act Mar. 28, 1941, c. 79, §2.)

CHAPTER 75

Courts of Justices of the Peace

GENERAL PROVISIONS

8993. Jurisdiction limited to county.

Justices of the peace are state officers and their courts are state courts, and city council of home rule charter city cannot remove a justice of the peace, regardless of charter provision. *State v. Hutchinson*, 288NW845. See Dun. Dig. 5263.

Alexandria being a home-rule charter city and its charter providing for justice of the peace courts, such justice courts have both criminal and civil jurisdiction within the city, notwithstanding that it also has a municipal court. *State v. Weed*, 294NW370. See Dun. Dig. 5263.

8994. Place of holding court.

Justice of the peace at Wayzata has no authority to hold court in city of Minneapolis for convenience of parties or an accused, but if he holds court in a town, village, or ward within his county adjoining the town or ward in which he resides, or in any village located within his town, he is entitled to 10 cents a mile for travel to and from place of holding trial. Op. Atty. Gen., (266a-13), Oct. 23, 1939.

COMMENCEMENT OF ACTIONS

9002. Actions, how commenced.

When a complaint is made to a justice for purpose of having a summons issued, issuance of summons is a ministerial duty, and it is not his duty at such time to determine whether or not a cause of action exists, though he may refuse to issue summons if the action is not one within his jurisdiction. Op. Atty. Gen. (266B-4), Oct. 31, 1940.

9003. Security for costs.

Where action is settled between parties without any further court action after issuance of summons, it is only where summons asked for costs and disbursements that justice could enter judgment against defendant for costs. Op. Atty. Gen. (266B-7), Jan. 17, 1941.

9012. Transfer of action.

A justice of the peace is not allowed a specific fee of \$2.00 for transferring venue of a case, civil or criminal, to another justice. Op. Atty. Gen. (266B-25), Dec. 21, 1940.

JUDGMENTS

9046. Time of entry.

Editorial note.—The Soldiers' and Sailors' Civil Relief Act of March 8, 1918, has been revived. See Soldiers' and Sailors' Civil Relief Act of 1940, Mason's U. S. C. A., current pamphlet, Title 50. For cases under the old act see Mason's U. S. C. A., Appendix 1, Act 2151.

9047. For costs on dismissal.

Where action is settled between parties without any further court action after issuance of summons, it is only where summons asked for costs and disbursements that justice could enter judgment against defendant for costs. Op. Atty. Gen. (266B-7), Jan. 17, 1941.

CRIMINAL PROCEEDINGS

9110. Jurisdiction.

Justice of peace has no right to specify type of labor to be performed by prisoner. Op. Atty. Gen., (266B-20), March 6, 1940.

(4).

Alexandria being a home-rule charter city and its charter providing for justice of the peace courts, such justice courts have both criminal and civil jurisdiction within the city, notwithstanding that it also has a municipal court. *State v. Weed*, 294NW370. See Dun. Dig. 5340.

9127. Judgment on conviction.

Power to suspend sentence must be exercised at time of imposition of sentence. Op. Atty. Gen., (266B-21), Feb. 5, 1940.

9136. Certificate of conviction, etc.

Taxing jurors' fees as items of costs to be charged against county where jury failed to agree on verdict and justice dismissed case, discussed. Op. Atty. Gen., (266B-8), Dec. 28, 1939.

Municipal court need not file certificate of conviction under this section. Op. Atty. Gen. (306a), Aug. 9, 1940.

CHAPTER 76

Forcible Entry and Unlawful Detainer

Editorial note.—Remedies against soldiers and sailors, including draftees, are affected by the Selective Training and Service Act of 1940, §13, and the Soldiers' and Sailors' Civil Relief Act of 1940. See Mason's U. S. Code, October, 1940, Pamphlet, Title 50.

CHAPTER 77

Civil Actions

9164. One form of action—Parties, how styled.

COMMON LAW DECISIONS RELATING TO ACTIONS IN GENERAL

1. Election of remedy.

A frustrated attempt to pursue a wrong remedy is not an election which will bar one otherwise right. *Heibel v. U.*, 288NW393. See Dun. Dig. 2914.

2. Conflict of laws.

Nat'l Sur. Corp. v. Wunderlich, (CCA8)111F(2d)622, rev'g on other grounds 24FSupp640.

Question whether court erred in denying motion for a directed verdict in action for personal injuries in federal district court of Minnesota must be determined by the law of Minnesota. *Champlin Refining Co. v. W.*, (CCA8), 113F(2d)844.

The substantive rights of parties to an action are governed by the *lex loci*, that is, the law of the place where